

AMENDED IN SENATE APRIL 15, 2013

**SENATE BILL**

**No. 650**

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**Introduced by Senator Lieu**

February 22, 2013

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An act to amend Section ~~25249.13~~ 25249.7 of the Health and Safety Code, relating to toxic chemicals.

LEGISLATIVE COUNSEL'S DIGEST

SB 650, as amended, Lieu. Toxic chemicals: exposure.

~~The existing~~

(1) *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) prohibits any person, in the course of doing business, from knowingly and intentionally exposing any individual to a chemical known to the state to cause cancer or reproductive toxicity without giving a specified warning, or from discharging or releasing such a chemical into any source of drinking water, except as specified. The act provides that it does not alter or diminish any legal obligation otherwise required in common law or by statute or regulation, or create or enlarge any defense in any action to enforce a legal obligation. The act requires a person bringing an action in the public interest, or a private person filing an action in which a violation of the act is alleged, to provide to specified entities, including to the Attorney General, a notice of an alleged violation at least 60 days prior to the filing of the action and to report to the Attorney General the results of a settlement or judgment and the final disposition of a case brought by the person. The act requires the Attorney General to maintain a record of the notice and report and to make the information available to the public.*

This bill would ~~make nonsubstantive changes to this provision specifically require the Attorney General to post the above information on its Internet Web site.~~

(2) Proposition 65 provides that it may be amended by a statute, passed in each house by a  $\frac{2}{3}$  vote, to further its purposes.

This bill would find and declare that it furthers the purposes of Proposition 65.

Vote: ~~majority~~ $\frac{2}{3}$ . Appropriation: no. Fiscal committee: ~~no~~yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 25249.7 of the Health and Safety Code  
2     is amended to read:

3     25249.7. (a) Any person ~~that~~ who violates or threatens to  
4     violate Section 25249.5 or 25249.6 may be enjoined in ~~any~~ a court  
5     of competent jurisdiction.

6     (b) (1) Any person who has violated Section 25249.5 or 25249.6  
7     shall be liable for a civil penalty not to exceed two thousand five  
8     hundred dollars (\$2,500) per day for each violation in addition to  
9     any other penalty established by law. That civil penalty may be  
10    assessed and recovered in a civil action brought in any court of  
11    competent jurisdiction.

12    (2) In assessing the amount of a civil penalty for a violation of  
13    this chapter, the court shall consider all of the following:

14    (A) The nature and extent of the violation.

15    (B) The number of, and severity of, the violations.

16    (C) The economic effect of the penalty on the violator.

17    (D) Whether the violator took good faith measures to comply  
18    with this chapter and the time these measures were taken.

19    (E) The willfulness of the violator's misconduct.

20    (F) The deterrent effect that the imposition of the penalty would  
21    have on both the violator and the regulated community as a whole.

22    (G) Any other factor that justice may require.

23    (c) Actions pursuant to this section may be brought by the  
24    Attorney General in the name of the people of the State of  
25    California, by ~~any~~ a district attorney, by ~~any~~ a city attorney of a  
26    city having a population in excess of 750,000, or, with the consent  
27    of the district attorney, by a city prosecutor in ~~any~~ a city or city

1 and county having a full-time city prosecutor, or as provided in  
2 subdivision (d).

3 (d) Actions pursuant to this section may be brought by any  
4 person in the public interest if both of the following requirements  
5 are met:

6 (1) The private action is commenced more than 60 days from  
7 the date that the person has given notice of an alleged violation of  
8 Section 25249.5 or 25249.6 that is the subject of the private action  
9 to the Attorney General and the district attorney, city attorney, or  
10 prosecutor in whose jurisdiction the violation is alleged to have  
11 occurred, and to the alleged violator. If the notice alleges a  
12 violation of Section 25249.6, the notice of the alleged violation  
13 shall include a certificate of merit executed by the attorney for the  
14 noticing party, or by the noticing party, if the noticing party is not  
15 represented by an attorney. The certificate of merit shall state that  
16 the person executing the certificate has consulted with one or more  
17 persons with relevant and appropriate experience or expertise who  
18 has reviewed facts, studies, or other data regarding the exposure  
19 to the listed chemical that is the subject of the action, and that,  
20 based on that information, the person executing the certificate  
21 believes there is a reasonable and meritorious case for the private  
22 action. Factual information sufficient to establish the basis of the  
23 certificate of merit, including the information identified in  
24 paragraph (2) of subdivision (h), shall be attached to the certificate  
25 of merit that is served on the Attorney General.

26 (2) Neither the Attorney General, ~~any~~ a district attorney, ~~any~~ a  
27 city attorney, nor ~~any~~ a prosecutor has commenced and is diligently  
28 prosecuting an action against the violation.

29 (e) ~~Any~~ A person bringing an action in the public interest  
30 pursuant to subdivision (d) and ~~any~~ a person filing ~~any~~ an action  
31 in which a violation of this chapter is alleged shall notify the  
32 Attorney General that the action has been filed. Neither this  
33 subdivision nor the procedures provided in subdivisions (f) to (j),  
34 inclusive, shall affect the requirements imposed by statute or a  
35 court decision in existence on January 1, 2002, concerning whether  
36 ~~any~~ a person filing ~~any~~ an action in which a violation of this  
37 chapter is alleged is required to comply with the requirements of  
38 subdivision (d).

39 (f) (1) ~~Any~~ A person filing an action in the public interest  
40 pursuant to subdivision (d), ~~any~~ a private person filing ~~any~~ an

1 action in which a violation of this chapter is alleged, or ~~any a~~  
2 private person settling ~~any a~~ violation of this chapter alleged in a  
3 notice given pursuant to paragraph (1) of subdivision (d), shall,  
4 after the action or violation is subject either to a settlement or to  
5 a judgment, submit to the Attorney General a reporting form that  
6 includes the results of that settlement or judgment and the final  
7 disposition of the case, even if dismissed. At the time of the filing  
8 of ~~any a~~ judgment pursuant to an action brought in the public  
9 interest pursuant to subdivision (d), or ~~any an~~ action brought by a  
10 private person in which a violation of this chapter is alleged, the  
11 plaintiff shall file an affidavit verifying that the report required by  
12 this subdivision has been accurately completed and submitted to  
13 the Attorney General.

14 (2) ~~Any~~ A person bringing an action in the public interest  
15 pursuant to subdivision (d), or ~~any a~~ private person bringing an  
16 action in which a violation of this chapter is alleged, shall, after  
17 the action is either subject to a settlement, with or without court  
18 approval, or to a judgment, submit to the Attorney General a report  
19 that includes information on any corrective action being taken as  
20 a part of the settlement or resolution of the action.

21 (3) The Attorney General shall develop a reporting form that  
22 specifies the information that shall be reported, including, but not  
23 limited to, for purposes of subdivision (e), the date the action was  
24 filed, the nature of the relief sought, and for purposes of this  
25 subdivision, the amount of the settlement or civil penalty assessed,  
26 other financial terms of the settlement, and any other information  
27 the Attorney General deems appropriate.

28 (4) If there is a settlement of an action brought by a person in  
29 the public interest under subdivision (d), the plaintiff shall submit  
30 the settlement, other than a voluntary dismissal in which no  
31 consideration is received from the defendant, to the court for  
32 approval upon noticed motion, and the court may approve the  
33 settlement only if the court makes all of the following findings:

34 (A) Any warning that is required by the settlement complies  
35 with this chapter.

36 (B) Any award of attorney's fees is reasonable under California  
37 law.

38 (C) Any penalty amount is reasonable based on the criteria set  
39 forth in paragraph (2) of subdivision (b).

1 (5) The plaintiff subject to paragraph (4) has the burden of  
2 producing evidence sufficient to sustain each required finding.  
3 The plaintiff shall serve the motion and all supporting papers on  
4 the Attorney General, who may appear and participate in any  
5 proceeding without intervening in the case.

6 (6) Neither this subdivision nor the procedures provided in  
7 subdivision (e) and subdivisions (g) to (j), inclusive, shall affect  
8 the requirements imposed by statute or a court decision in existence  
9 on January 1, 2002, concerning whether claims raised by any  
10 person or public prosecutor not a party to the action are precluded  
11 by a settlement approved by the court.

12 (g) The Attorney General shall maintain a record of the  
13 information submitted pursuant to subdivisions (e) and (f) and  
14 shall make this information available to the public, *including the*  
15 *posting of the information on its Internet Web site.*

16 (h) (1) Except as provided in paragraph (2), the basis for the  
17 certificate of merit required by subdivision (d) is not discoverable.  
18 However, nothing in this subdivision shall preclude the discovery  
19 of information related to the certificate of merit if that information  
20 is relevant to the subject matter of the action and is otherwise  
21 discoverable, solely on the ground that it was used in support of  
22 the certificate of merit.

23 (2) Upon the conclusion of an action brought pursuant to  
24 subdivision (d) with respect to any defendant, if the trial court  
25 determines that there was no actual or threatened exposure to a  
26 listed chemical, the court may, upon the motion of that alleged  
27 violator or upon the court's own motion, review the basis for the  
28 belief of the person executing the certificate of merit, expressed  
29 in the certificate of merit, that an exposure to a listed chemical had  
30 occurred or was threatened. The information in the certificate of  
31 merit, including the identity of the persons consulted with and  
32 relied on by the certifier, and the facts, studies, or other data  
33 reviewed by those persons, shall be disclosed to the court in an  
34 in-camera proceeding at which the moving party shall not be  
35 present. If the court finds that there was no credible factual basis  
36 for the certifier's belief that an exposure to a listed chemical had  
37 occurred or was threatened, then the action shall be deemed  
38 frivolous within the meaning of Section ~~128.6~~ or 128.7 of the Code  
39 of Civil Procedure, whichever provision is applicable to the action.  
40 The court shall not find a factual basis credible on the basis of a

1 legal theory of liability that is frivolous within the meaning of  
2 ~~Section 128.6 or 128.7 of the Code of Civil Procedure, whichever~~  
3 ~~provision is applicable to the action.~~

4 (i) The Attorney General may provide the factual information  
5 submitted to establish the basis of the certificate of merit on request  
6 to any district attorney, city attorney, or prosecutor within whose  
7 jurisdiction the violation is alleged to have occurred, or to any  
8 other state or federal government agency, but in all other respects  
9 the Attorney General shall maintain, and ensure that all recipients  
10 maintain, the submitted information as confidential official  
11 information to the full extent authorized in Section 1040 of the  
12 Evidence Code.

13 (j) ~~In any~~ *an* action brought by the Attorney General, a district  
14 attorney, a city attorney, or a prosecutor pursuant to this chapter,  
15 the Attorney General, district attorney, city attorney, or prosecutor  
16 may seek and recover costs and attorney's fees on behalf of any  
17 party who provides a notice pursuant to subdivision (d) and who  
18 renders assistance in that action.

19 *SEC. 2. The Legislature finds and declares that this act furthers*  
20 *the purposes of the Safe Drinking Water and Toxic Enforcement*  
21 *Act of 1986 (Chapter 6.6 (commencing with Section 25249.5) of*  
22 *Division 20 of the Health and Safety Code).*

23 ~~SECTION 1. Section 25249.13 of the Health and Safety Code~~  
24 ~~is amended to read:~~

25 ~~25249.13. (a) This chapter does not alter or diminish any legal~~  
26 ~~obligation otherwise required in common law or by statute or~~  
27 ~~regulation, and it does not create or enlarge any defense in any~~  
28 ~~action to enforce a legal obligation.~~

29 ~~(b) Penalties and sanctions imposed under this chapter shall be~~  
30 ~~in addition to any penalties or sanctions otherwise prescribed by~~  
31 ~~law.~~